

ESTATE OF WILLIAM JAMES,  
By its Personal Representative,  
Menyonde Lewis,

Plaintiff,

v.

MAYOR AND CITY COUNCIL  
OF BALTIMORE,

Defendant.

IN THE

CIRCUIT COURT

FOR BALTIMORE CITY

CASE NO.: 24-C-19-002784

\* \* \*

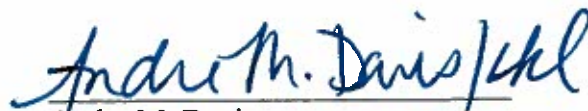
**MAYOR AND CITY COUNCIL OF BALTIMORE'S**  
**MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR HEARING**

Defendant, Mayor and City Council of Baltimore ("Movant"), by its undersigned counsel, hereby moves for summary judgment pursuant to Maryland Rule 2-501, as there exists no genuine dispute of material fact and movant is entitled to judgment as a matter of law. In support hereof, movant files herewith the attached "Stipulated Statement of Undisputed Material Facts" (with accompanying Exhibits A through I), Memorandum in Support of Motion for Summary Judgment, and Request for Hearing.

**WHEREFORE**, the City requests that upon the hearing and consideration hereof, judgment be entered in its favor against Plaintiff. A proposed Order is attached

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Respectfully submitted,



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CITY SOLICITOR

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**REQUEST FOR A HEARING**

Movant, the Mayor and City Council of Baltimore, respectfully requests a prompt hearing on its Motion for Summary Judgment.

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 2nd day of July, 2019, copies of the foregoing Motion for Summary Judgment, Proposed Order, and Request for Hearing, were mailed, postage paid, to:

Howard A. Miliman, Esq.  
Mandy L. Miliman, Esq.  
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CHIEF SOLICITOR

ESTATE OF WILLIAM JAMES,  
By its Personal Representative,  
Menyonde Lewis,

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MAYOR AND CITY COUNCIL  
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\* \* \*

IN THE

CIRCUIT COURT

FOR BALTIMORE CITY

CASE NO.: 24-C-19-002784

**MEMORANDUM OF LAW IN SUPPORT OF MAYOR AND CITY COUNCIL OF  
BALTIMORE'S MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

This is a so-called “enforcement action” in which Plaintiff, the Estate of William James (“Plaintiff” or “the Estate”), seeks to compel Defendant, the Mayor and City Council of Baltimore (the “City”) to pay a \$32,000 judgment Plaintiff’s decedent (“Mr. James”) recovered in an earlier lawsuit against three former Baltimore City police officers. *See Johnson v. Francis*, 239 Md. App. 530, 555 (2018), *cert. denied*, 463 Md. 155 (2019) (holding that “[a] plaintiff who obtains a judgment against a local government’s employee [pursuant to the procedures applicable under Maryland’s Local Government Tort Claims Act] can establish the local government’s liability [to pay the judgment] by filing an enforcement action against the local government.” (brackets added)).

To expedite Maryland courts’ resolution of important and novel questions of state law raised in this action, the parties have agreed to file cross-motions for summary judgment. In connection therewith, they have entered into a comprehensive “Stipulated Statement of Undisputed Material Facts” (“the Stipulation,” which is filed together with this Memorandum) consisting of a 220 paragraph recitation of the history of the federal prosecution of the first eight

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known members of the Baltimore City Police Department's Gun Trace Task Force ("GTTF"), three of whom are the judgment debtors in respect to the \$32,000 judgment underlying this action. As the Stipulation expressly attests, its contents comprise the entire universe of undisputed, material facts dispositive of the question presented.

The GTTF was a notorious specialized unit of plainclothes officers whose ostensible functions and purposes were to identify, arrest, and build legitimate, prosecutable cases against violent offenders in Baltimore City, particularly those who used firearms. However, as spelled out in meticulous detail in the Stipulation (which is accompanied by nine indexed exhibits, the genuineness, authenticity, and admissibility of which are expressly stipulated by the parties) the real story of the GTTF best comes from the co-conspirators' own mouths. The GTTF members readily explain how they deviated completely from the mission of the BPD, and instead used the GTTF as a cover to run a vast criminal enterprise for which several members are currently incarcerated. As the City elaborates in this Memorandum, the GTTF was in fact a sometimes violent, always armed, "racketeering enterprise" within the meaning of federal law, whose members, over many years, willfully, purposefully, and intentionally conspired with each other to devise and execute a far-reaching and outrageous plot to terrorize residents of and visitors to Baltimore City for their own financial gain through the most vile criminal acts: extortion, threats, theft of United States currency, the unconstitutional seizure of illegal narcotics, and the subsequent distribution of those narcotics to known drug dealer GTTF associates for subsequent street sale.

The upshot of the sordid history of the GTTF, as shown by even a casual reading of the Stipulation, informed by enduring principles of law well-established in Maryland, is that, as a matter of law, in this particular enforcement action, the City is not liable to pay the judgment

obtained by Plaintiff's decedent. This is so because the former GTTF officers against whom that judgment was obtained (Jemell Rayam, Marcus Taylor, and Wayne Jenkins, referred to herein as "the Officers"), were acting outside the scope of their employment as Baltimore City Police Department ("BPD") officers when they pretextually detained Mr. James, planted a gun on him, arrested him, and then lied in the arrest paperwork, maliciously causing Mr. James's prosecution for crimes he did not commit, as the Officers very well knew.

Specifically, the record here shows, as a matter of law, that the Officers' willful prosecution of Mr. James on false charges and fabricated evidence was conduct on their part that occurred during, and in furtherance of, the criminal conspiracy for which the Officers pled guilty (or, in the case of Taylor, was found guilty at trial) and for which they are currently incarcerated in facilities maintained by the federal Bureau of Prisons. Because the Officers acted outside the scope of their employment, neither the LGTCA nor a mirror provision of the relevant collective bargaining agreement ("Memorandum of Understanding" or "MOU") between the City, the BPD and the Fraternal Order of Police, requires the City to pay the judgment entered against them.

Collectively, the Officers have been convicted of, or pled guilty to, racketeering and racketeering conspiracy under the Racketeer Influenced Corrupt Organizations Act ("RICO") and Hobbs Act Robbery. From at least 2014 until their arrests in early 2017, the Officers were co-conspirators in a far-reaching and outrageous plot to terrorize citizens of Baltimore City for their own financial gain. They routinely and as a matter of course detained and robbed citizens, planted guns and drugs, and lied in documents to justify arrests, and perjured themselves on a daily basis. They coached each other on how to mislead BPD and City officials about their crimes. In short, they were lousy police officers but accomplished mobsters.

The City should not be ordered to expend taxpayer dollars to pay judgments entered against convicted criminals who happened to be employed by the BPD when they committed intentional and malicious crimes using their police status, gear and equipment as mere disguises. Such actions are categorically outside the scope of a police officer's employment. Both Maryland case law and common sense dictate that partners in crime acting in furtherance of their personally motivated criminal conspiracy cannot ever be said to be acting within the scope of their employment when they commit serious felonies against and terrorize members of a community.

Whether the City, on a case-by-case basis after examining the facts and circumstances presented by any particular claimant, should provide compensation to a victim of the GTTF criminal enterprise, is not the question posed in this enforcement action. That is a question to be determined in the exercise of the City's discretion to do justice by its residents and visitors. But for the reasons explained within, there is no basis in law to **compel** the City to pay the judgment sought to be enforced in this case. Manifestly, the City is entitled to judgment in its favor.

## **II. PROCEDURAL HISTORY**

On February 23, 2017, and November 30, 2017, the Officers were among eight BPD policemen indicted on, among other federal offenses, RICO and RICO conspiracy charges. *See* Case no. 1:17-cr-00106-CCB, ECF No. 1 (D. Md.) (Rayam, Jenkins, Taylor); 1:17-cr-00638-CCB, ECF No. 1 (D. Md.) (Jenkins). A superseding indictment was filed against Jenkins, Hersl, and Taylor on June 22, 2017. *See* 1:17-cr-00106-CCB, ECF No. 137 (D. Md.). On June 28, 2017, Rayam pled guilty to RICO conspiracy. *See* 1:17-cr-00106-CCB, ECF No. 196. On January 5, 2018, Jenkins pled guilty to RICO conspiracy, racketeering, and Hobbs Act Robbery. *See* 1:17-cr-00638-CCB, ECF No. 5. On February 12, 2018, a jury found Hersl and Taylor guilty

of RICO conspiracy, racketeering, and Hobbs Act Robbery. *See* 1:17-cr-00106-CCB, ECF No. 342 (D. Md.). The Officers are currently incarcerated in federal prisons. Stipulation, ¶¶ 3, 16-19.

On March 23, 2018, Mr. James filed a Complaint in the Circuit Court for Baltimore City against the Officers,<sup>1</sup> BPD, and the City alleging tortious conduct during a traffic stop by the Officers of Mr. James on August 18, 2016. *See William James v. Balt. Police Dep't*, Case No. 24-C-18-001701. On July 13, 2018, Mr. James, the BPD, and the City stipulated to the dismissal of the BPD and the City.

On April 1, 2019, Mr. James and the Officers (*i.e.*, Rayam, Taylor, and Jenkins) filed a Motion for Consent Judgment and proposed Consent Order, providing for entry of a judgment, jointly and severally against the Officers, in the amount of \$32,000 in favor of James for full and final settlement of all of his claims in the underlying case. The Honorable Philip Jackson approved and signed the Consent Order on April 8, 2019, and the judgment was docketed on April 9, 2019. Following the indexing of the judgment on April 16, 2019, the Officers assigned their rights to indemnification to Mr. James with respect to collection of the judgment amount.

The City has stipulated to the propriety of the consent judgment and to the validity of the Officers' assignment of their ostensible right to indemnification to Mr. James. Moreover, the City has stipulated that, under *Francis, supra*, if indeed Plaintiff Personal Representative, now seasonably substituted for Mr. James (who died of causes unrelated to the matters at issue here) can prove by a preponderance of the evidence that Officers Rayam, Jenkins, and Taylor were acting within the scope of their employment as BPD police officers when they detained Mr. James, planted a firearm at the scene and then falsely and fraudulently prepared charging

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<sup>1</sup> Mr. James also named ex-officer Daniel Hersl, a member of the GTTF, as a defendant but he voluntarily dismissed his claims against Hersl on April 1, 2019.

documents prompting the criminal prosecution of Mr. James, then to that extent the City is obliged under the LGTCA (and the related MOU provision) to pay the judgment sued on. *See Francis*, 239 Md. App. 530 at 598-99, stating,

In summary, where a money judgment is entered against an employee of a local government arising from tortious acts or omissions committed by the employee:

- The local government is liable to the plaintiff for the amount of the judgment, up to the limits provided in [the LGTCA], if and only if the employee was acting within the scope of his or her employment with the local government; and
- A plaintiff who obtains a judgment against a local government's employee can establish the local government's liability by filing an enforcement action against the local government. In such a proceeding, the local government can raise as a defense that the employee was not acting within the scope of his or her employment.

### **III. STIPULATED STATEMENT OF UNDISPUTED MATERIAL FACTS**

In support of its motion for summary judgment, the City respectfully refers the Court to the full Stipulation (and accompanying exhibits) attached to this Memorandum. Nevertheless, to assist the Court in its review of the compelling evidence militating in favor of the grant of the motion for summary judgment, the City sets forth below some of the more salient aspects of the Stipulation, retaining the numbered paragraph designations but otherwise not indicating where deletions have been made to the filed Stipulation:

3) Momodu Bondeva Kenton Gondo, Evodio Calles Hendrix, Daniel Thomas Hersl, **Wayne Earl Jenkins, Jemell Lamar Rayam, Marcus Roosevelt Taylor**, Maurice Kilpatrick Ward, and Thomas Allers (at times hereinafter referred to jointly and severally as "co-conspirators") are former officers of the BPD, members of the so-called Gun Trace Task Force ("GTTF") all of whom were indicted by the Office of the United States Attorney for the District of Maryland for their knowing and willful participation in a wide-ranging, years-long racketeering conspiracy, as described in detail below.

4) As of the filing of the Cross-Motions for Summary Judgment in this case, each of the co-conspirators has pled guilty or was found guilty of his crimes following trial and has been sentenced to incarceration in a federal prison for a term ranging from a low of seven years to a high of twenty-five years.

- 5) The Baltimore City Lodge #3 of Fraternal Order of Police, Inc. (“FOP”) is a nonstock corporation and a labor organization that is the sole authorized collective bargaining representative for rank and file BPD police officers (including sergeants and lieutenants).
- 6) The Memorandum of Understanding (“MOU”) was negotiated by the FOP on behalf of BPD officers; the co-conspirators remain beneficiaries of such MOU and any predecessor and successor MOU in matters relevant to this case.
- 7) The indemnification provision of the Local Government Tort Claims Act (“LGTCa”), codified at Md. Code, Courts & Jud. Proc. Art., sec. 5-303(b) provides: **“Except as provided in subsection (c) of this section, a local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government.”**
- 8) Both the City and the BPD are deemed “local governments” under the LGTCa but the City alone maintains a “suits and judgments account” for the payment of settlements and judgments arising out of police-involved litigation and, exclusive of the BPD, makes disbursements therefrom on behalf of the BPD.
- 9) Personnel of the BPD are afforded indemnification under sec. 5-303(b), whereby the City, *via* its use of the City’s General Fund, customarily satisfies judgments up to the statutory cap entered against BPD personnel when same are found to arise out of actions committed within the scope of their employment as provided by the LGTCa.
- 10) The current labor agreement between the FOP, the City, and the BPD is memorialized via the MOU between the City, the BPD and the Baltimore City Lodge No. 3, Fraternal Order of Police, Inc. Unit I, Fiscal Years 2018-2020. Article 15 (“Protection Against Liability”) of the MOU provides in part:
- [L]egal counsel will be provided in any civil case when the plaintiff alleges that an employee should be held liable for acts alleged to be within the scope of his employment and/or his official capacity. The City will provide indemnification to any member of the unit who is made a defendant in litigation arising out of acts with the scope of his/her employment that results in a monetary judgment being rendered against the employee.
- 11) The allegations in the federal indictments against the co-conspirators and the additional criminal wrongs not included in the indictments, but as to which the co-conspirators have pled guilty or were found guilty following trial, demonstrate actions that are at odds and contrary to the customary and normal duties of legitimate law enforcement, including officers of the BPD.

- 12) No duty of indemnification is imposed under the relevant sections of the LGTCA or the MOU for liability incurred based on acts and conduct that are without the scope of employment of BPD officers.
- 13) On or about August 24, 2017, the Office of the United States Attorney for the District of Maryland filed a seven-count indictment against co-conspirator Thomas Allers. *See* Copy of Indictment, attached hereto as Exhibit A, and incorporated herein by reference.
- 14) The indictment charged Allers with knowing and intentional participation in racketeering activity, consisting of multiple acts involving robbery, attempted robbery, conspiracy, extortion, attempted extortion, and authoring false incident reports. *See* Exhibit A, at Paragraphs 8-9.
- 15) The indictment further stated that the “purposes of the defendant included violating the legitimate purposes of the BPD in order to enrich himself through illegal conduct, including robbery and extortion.” *Id.*, at Paragraph 7.
- 16) On or about February 27, 2017, the Office of the United States Attorney for the District of Maryland had filed a two-count indictment against the seven other co-conspirators. *See* Copy of Indictment, attached hereto as Exhibit B, and incorporated herein by reference.
- 17) That indictment charged seven co-conspirators with knowing and intentional participation in a vast criminal conspiracy, encompassing willful and intentional criminal activity that included as overt acts during and in furtherance of the conspiracy false arrest, malicious prosecution, assault and battery, robbery and extortion of citizens and visitors to Baltimore City, deprivations of civil and constitutional rights, time and attendance fraud against the BPD in order to obtain salary and overtime pay for time not actually worked, and other offenses too numerous to name. *See* Exhibit B, at Paragraph 16 (a)-(h). The indictment further stated that the “purposes of the [co-conspirators] included violating the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud.” *Id.*, at Paragraph 14.
- 18) Six of the eight co-conspirators (Allers, **Jenkins**, **Rayam**, Gondo, Ward, and Hendrix) pled guilty to the various crimes alleged in the indictments and/or additional crimes not alleged in the indictment, but identified in their written plea agreements with the Office of the United States Attorney.
- 19) The plea agreements are attached hereto and incorporated into this Stipulated Statement of Undisputed Material Facts by reference as Exhibits C, D, E, F, G and H.

- 20) In his plea agreement, Allers agreed that “[t]he purposes of the Defendant and his co-defendants included violating the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud.” *See* Plea Agreement of Defendant Allers, attached hereto as Exhibit C.
- 21) In their respective plea agreements, Gondo, Hendrix, **Jenkins, Rayam**, and Ward likewise agreed that “[t]he purposes of [the individual Defendant] and his co-defendants included violating the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud.” *See* Exhibits D, E, F, G and H.
- 22) The offenses to which the co-conspirators pled guilty demonstrate actions and omissions and various forms of conduct that grossly depart from any authorized or legitimate police conduct.
- 23) Two of the eight co-conspirators (Hersl and **Taylor**) proceeded to trial on the indictment and were found guilty of various crimes, including racketeering, and Hobbs Act robbery and extortion.
- 24) The verdict sheet from that joint trial is attached hereto and incorporated into this Stipulation of Undisputed Material Facts by reference as Exhibit I.
- 25) The crimes of which the co-conspirators were found guilty demonstrate actions and omissions and various forms of conduct that grossly depart from any authorized or legitimate police conduct.
- 26) The underlying actions comprising the criminal acts described in the indictments and plea agreements failed to serve any legitimate purpose of the City’s or BPD’s business as a municipal government entity or the principal public safety agency of that government or did so only coincidentally.
- 27) The underlying actions comprising that criminal activity are not ones recognized, supported, or otherwise authorized by any of BPD’s training provided to law enforcement officers.
- 28) The underlying actions comprising that criminal activity are not ones recognized, supported, or otherwise authorized by any of BPD’s policies, standard operating procedures, general orders, or guidelines.
- 29) The actions of the co-conspirators were performed during and in furtherance of their outrageous criminal conspiracy and in pursuit of their own pecuniary self-interests.
- 30) The co-conspirators purposefully and willfully and regularly deviated from the legitimate law enforcement aims of the BPD’s mission in order to enrich themselves through their illegitimate and illegal conduct.

31) The co-conspirators accomplished this by concealing their illegitimate and illegal conduct from City officials and from their superiors.

32) The co-conspirators would sometimes intentionally avoid attending and would not appear for scheduled court proceedings related to individuals they had falsely arrested so as not to be questioned regarding their illegal activity of extorting and robbing citizens and fabricating evidence against such falsely arrested persons.

33) The co-conspirators conspired with each other and coached each other in order to better lie to internal investigators to cover up and conceal their wrongdoing.

**SPECIFIC AGREED FACTS AS TO THE CO-CONSPIRATORS'  
ACTIONS IN RESPECT TO WILLIAM JAMES ON AUGUST 18, 2016,  
DURING AND IN FURTHERANCE OF THE RACKETEERING  
CONSPIRACY**

34) Plaintiff's Decedent, William James ("Plaintiff") was a citizen of the United States residing in Baltimore, Maryland.

35) Co-conspirators **Marcus Taylor, Jemell Rayam, and Wayne Jenkins** were on duty on August 18, 2016. On that date, Plaintiff and his girlfriend were traveling in a vehicle on Hillen Street in Baltimore when two Baltimore police vehicles cut in front of him, causing him to pull over. The three above co-conspirators were inside those two vehicles.

36) At the time that Plaintiff was pulled over, neither Plaintiff nor his girlfriend was committing any traffic infraction or engaged in illegal activity. After cutting off Plaintiff, **Taylor** exited one of the police vehicles, approached Plaintiff's vehicle, and, without any reasonable suspicion or probable cause, pulled Plaintiff out of his car. Co-conspirator **Taylor** advised Plaintiff that he would release Plaintiff if Plaintiff provided the name of a person who possessed guns or drugs. Plaintiff could not, and did not, provide any such names. Co-conspirator **Rayam** then advised Plaintiff's girlfriend that Plaintiff would be going to jail for possession of a gun. Plaintiff was not in possession of a gun, a weapon, or any illegal substances.

37) The co-conspirators then huddled in a circle around their vehicles to converse. When they finished, **Jenkins** emerged with a gun and stated to Plaintiff, **"This is your gun right here."** None of the co-conspirators had searched Plaintiff's person, Plaintiff's girlfriend's person, or Plaintiff's car before **Jenkins** produced this gun. Indeed, this gun did not belong to Plaintiff.

38) The co-conspirators then arrested Plaintiff and transported him to Baltimore City Central Booking & Intake Center, where he was ordered to be held on no bail. The co-conspirators charged Plaintiff with six felony counts related to illegal possession of a handgun.

39) On March 24, 2017, after the federal racketeering conspiracy indictment of the co-conspirators became public, the State entered a *nolle prosequi* as to all counts.

40) As a result of the co-conspirators' false charges, Plaintiff was imprisoned and held without bail for more than seven months, resulting in the loss of his employment, the loss of time with his six-year-old son, his home going into foreclosure, and substantial other losses.

42) Plaintiff's false arrest, assault, and fraudulent conviction (*i.e.*, the events of August 18, 2016 and all subsequent matters related thereto) were not part of the indictments and criminal prosecution of the co-conspirators as described *supra* in Paragraphs 2, 3, and 9 – 33; the factual bases for the guilty pleas and/or guilty verdicts of the co-conspirators involved victims other than Plaintiff.

43) Plaintiff was not interviewed by federal investigators or prosecutors, nor was he called as a witness in the joint trial of co-conspirators Hersl and **Taylor**; none of the events of August 18, 2016, the day of Plaintiff's arrest or any subsequent incidents involving Plaintiff, were included in any stipulation of fact, plea agreement, pre-sentence report or other document relating to the co-conspirators' federal prosecution.

#### **SPECIFIC ACTIONS OF THE CO-CONSPIRATORS EXPRESSLY ADMITTED UNDER OATH IN THE CRIMINAL PROSECUTIONS**

44) The following twenty-eight (28) specific incidents admitted to under oath by the co-conspirators, among many others the precise nature, date of occurrence, and character of which are unknown, demonstrate the co-conspirators' illegal, illegitimate and egregious criminal conduct and craft a vivid picture of the nature and character and duration of the conspiratorial agreement into which all the co-conspirators knowingly and willfully entered and remained through the date of their indictment.

#### **October 5, 2016**

45) On October 5, 2016, **Rayam** and Gondo were involved in an incident with citizens bearing the initials A.A. and T.C.

46) During the incident, **Rayam** (equipped with a BPD issued firearm) and a third party named Kyle Wells, entered A.A.'s residence, while citizen T.C. was present in the home. Gondo acted as a lookout while Rayam and the third party were inside. **Rayam** took personal property, U.S. currency in an amount between \$12,000 to \$14,000, and 800 grams of heroin. **Rayam** took some of the drugs and sold same for profit, and provided Gondo with a share of the profits from same. The co-conspirators never submitted any paper work or otherwise advised BPD of the seizure of the personal property, funds or drugs seized from the location.

47) **Rayam** and Gondo pled guilty to the criminal activity associated with this incident. *See* Plea Agreement of Defendant **Rayam**, attached hereto as Exhibit D; Plea Agreement of Defendant Gondo, attached hereto as Exhibit G.

48) The October 5, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **October 3, 2016**

49) On or about October 3, 2016, **Jenkins, Rayam, Gondo, Taylor, Hendrix** and Ward, were involved in an incident with a citizen bearing initials G.H.

50) The co-conspirators pursued citizen G.H. in a high-speed pursuit. G.H. threw over nine (9) ounces of cocaine out of the window of his vehicle during the pursuit, wherein G.H. eventually crashed his car near Mondawmin Mall, located in Baltimore.

51) **Jenkins** recovered the cocaine and provided it to Rayam.

52) None of the co-conspirators authored any police reports noting the seizure of the drugs, nor submitted any drugs into evidence with BPD.

53) **Rayam** pled guilty to the criminal conduct associated with this incident. *See* Exhibit D.

54) The October 3, 2016 incident and acts and omissions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **September 7, 2016**

55) On or about September 7, 2016, Gondo, Hersl, **Rayam, Taylor**, and Ward stopped S.S. as he attempted to leave the parking lot of a storage facility in Baltimore City. Taylor told S.S. that they had a warrant to search his storage unit when, in fact, they did not. Hersl, **Jenkins** and **Rayam** then went into S.S.'s storage unit and took a sock containing \$4,800 from the unit and took \$2,000 from it. **Rayam** then gave the sock back to S.S. and told him to leave.

56) **Rayam** told Gondo that he had to give **Jenkins** \$100 of the cash stolen from S.S.

57) To conceal the robbery and extortion, **Jenkins, Gondo, Hersl, Rayam, Taylor** and Ward did not prepare an Incident Report and did not submit to BPD the money stolen from S.S.

58) The September 7, 2016 incident and acts and omissions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.\*

#### **August 24, 2016**

59) On or about August 24, 2016, **Jenkins, Rayam**, Gondo, Hersl, and Hendrix were involved in an incident with a citizen bearing the initials A.F.

60) The co-conspirators initiated a traffic stop of citizen A.F. Hendrix stole \$1700 from citizen A.F. during the traffic stop while citizen A.F. was detained.

61) Hendrix later gave a portion of the \$1,700 to Ward.

62) None of the co-conspirators submitted any paperwork acknowledging the stop of citizen A.F., nor the taking of any of the funds from citizen A.F.

63) Ward and Hendrix pled guilty to the criminal activity related to this incident. *See* Plea Agreement of Defendant Ward, attached hereto as Exhibit E; Plea Agreement of Defendant Hendrix, attached hereto as Exhibit F.

64) The August 24, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **August 24, 2016**

65) On or about August 24, 2016, **Rayam**, Gondo, and Hersl were involved in an incident with a citizen bearing initials J.B.

66) **Rayam**, Gondo, and Hersl eventually entered citizen J.B.'s home.

67) While inside the home, **Rayam** stole \$1,500 from citizen J.B. directly in the presence of Gondo and Hersl.

68) **Rayam** authored a false police report in relation to the incident and in same failed to disclose the taking of the money.

69) **Rayam** pled guilty to the criminal activity related to this incident. *See* Exhibit D.

70) The August 24, 2016 incident involving citizen J.B. and actions in respect to same depict action not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

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\* The Estate's claim in this enforcement action under *Francis* is based on events occurring on August 18, 2016, during the conspiracy.

### August 8, 2016

- 71) On or about August 8, 2016, **Jenkins**, Hersl, Gondo, **Rayam**, and another BPD officer bearing initials J.C. were involved in an incident with a citizen bearing initials D.A.
- 72) **Jenkins**, Hersl, and J.C., observed D.A. leaving a storage facility, and then pursued and arrested D.A. as he was leaving the storage facility.
- 73) D.A. was taken from the scene, and **Jenkins**, Hersl, Gondo and **Rayam** went to D.A.'s storage facility.
- 74) Gondo and J.C. left the scene to prepare a search warrant for the storage facility.
- 75) While **Jenkins**, Hersl and **Rayam** were waiting for officer J.C. to return with a search warrant, **Jenkins** called a third party, and told the third party to break into D.A.'s storage unit and steal the contents located in same.
- 76) The third party then responded and broke into the storage unit and recovered three quarters of a kilogram of cocaine from same.
- 77) The third party later sold the drugs and provided some of the proceeds to **Jenkins**.
- 78) In turn, **Jenkins** provided some of the proceeds to Hersl.
- 79) None of the co-conspirators prepared any police reports acknowledging the seizure of any funds or drugs from the location or incident.
- 80) **Jenkins** and **Rayam** pled guilty to the criminal conduct associated with this incident. *See* Exhibit D; Plea Agreement of **Jenkins**, attached hereto as Exhibit H.
- 81) The August 8, 2016 incident and actions in respect to same depict action not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### July 8, 2016

- 82) On or about July 8, 2016, **Rayam**, **Jenkins**, Gondo, and Hersl, were involved in an incident with citizens bearing initials R.H. and N.H. which eventually lead the co-conspirators to the home of citizens R.H. and N.H.
- 83) The co-conspirators asked citizen R.H. where he kept his money in his home, and in response citizen R.H. advised them he kept his money in an upstairs bedroom.
- 84) The co-conspirators stole \$20,000 from citizen R.H.'s home.

85) During the incident, **Jenkins** told citizen R.H. that if R.H. could provide the name of a drug dealer for the co-conspirators to rob, they would “take care” of citizen R.H. and could perhaps provide narcotics for R.H. to sell.

86) **Rayam** later authored a false police report detailing the incident related to R.H. and N.H., and in same failed to disclose any of the sums seized from citizens R.H. and N.H.

87) **Rayam**, Gondo and **Jenkins** pled guilty to the criminal activity related to this incident. *See Exhibits D, G, and H.*

88) Hersl was found guilty by a jury of participating in the criminal act of the July 8, 2016 incident. *See Verdict Sheet of from the trial of Daniel Hersl and Macrus Taylor*, attached hereto as Exhibit I.

89) The July 8, 2016 incident and actions in respect to same depict action not in furtherance of any recognized mission, training, or policy, standard operating procedure, or guideline of the BPD.

#### **June 24, 2016**

90) On or about June 24, 2016, **Jenkins**, Ward, and Hendrix were involved in executing a search and seizure warrant in the home of a citizen bearing the initials M.M.

91) During this encounter, the co-conspirators were advised by M.M. where he kept sums of money in his home.

92) After the co-conspirators were advised where citizen M.M. kept his money, they sent him away, and stole a total of \$17,000 from citizen M.M.

93) The co-conspirators did not report the seizure of any funds from citizen M.M. to BPD.

94) Ward and Hendrix pled guilty to their criminal actions relating to this incident. *See Exhibits E and F.*

95) The June 24, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **June 2016**

96) In or about June 2016, **Jenkins**, Gondo and **Rayam** conducted a car stop of an unknown citizen.

97) Following the car stop of the citizen, the co-conspirators went to the citizen’s home and seized a 9mm handgun and a pound of marijuana from the home.

98) **Jenkins** directed **Rayam** to sell the handgun and the marijuana in order to pay a debt **Rayam** owed to **Jenkins**.

99) Gondo arranged for a third party to buy the handgun and the marijuana.

100) The third party paid **Rayam** for the handgun and the marijuana, and **Rayam** provided Gondo with a portion of the proceeds.

101) **Rayam** and Gondo pled guilty to the criminal conduct associated with this incident. *See Exhibits D and G.*

102) The June 2016 incident and actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **May 28, 2016**

103) On or about May 28, 2016, Allers, Gondo, **Rayam**, and Det. D.H. were involved in an incident with a citizen bearing the initials A.C.

104) Allers, Gondo, and **Rayam**, while executing a search and seizure warrant stole \$700 of \$1,000 from A.C.'s bedroom and gave D.H. the rest to give to the homeowner, who was A.C.'s grandmother.

105) Allers, Gondo, and **Rayam** pled guilty to the criminal activity associated with this incident. *See Exhibits C, D, and G.*

106) The May 28, 2016 incident and actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **May 11, 2016**

107) On or about May 11, 2016, Gondo, Hersl, and **Rayam** initiated a traffic stop of citizens bearing the initials N.D. and M.A.

108) During the traffic stop, **Rayam** stole approximately \$700 from a citizen described as N.D.

109) Gondo, Hersl, and **Rayam** did not submit the money to BPD for keeping in evidence, and authored false police reports excluding any mention of the stolen money.

110) The co-conspirators, in initiating the traffic stop, stealing the money, and authoring false paperwork, were acting out of their own self-interests in order to further their criminal conspiracy to rob and extort citizens.

111) **Rayam** pled guilty to this incident. *See Exhibit D.*

112) Gondo and Hersl did not stop **Rayam** or report his illegal activity to the BPD.

113) In failing to stop **Rayam** from stealing the funds, or reporting his illegal conduct of same to BPD, Gondo and Hersl were acting solely out of their own self-interests to further and continue their criminal conspiracy to rob and extort citizens.

114) The May 11, 2016 incident and actions in respect to same depicts actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **April 28, 2016**

115) On or about April 28, 2016, Allers, Hersl, Gondo, and **Rayam** arrested D.R.

116) After D.R. was in custody, Allers, Hersl, Gondo, and **Rayam** went inside the home where D.R. was living and gained consent from L.W. who lived with D.R. and their two children, to search the house.

117) L.W. and D.R. had more than \$10,000 cash in their home at the time of the search.

118) Allers stole over \$10,000 cash during the search.

119) To conceal his illegal conduct, on or about April 28, 2016, Allers approved an incident report, authored by **Rayam**, which he knew contained false information.

120) Allers pled guilty to the criminal activity associated with this incident. *See Exhibit C.*

121) The April 28, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **March 22, 2016**

122) On or about March 22, 2016, **Jenkins**, Hendrix, **Taylor**, and Ward were involved in an incident with a citizen bearing initials O.S.

123) The co-conspirators initiated a traffic stop of O.S. and seized a total of \$21,500 and narcotics from O.S.

124) The co-conspirators submitted only \$15,000, and stole the remaining \$6,500. Hendrix, submitted a false police report to BPD, approved by **Jenkins** as the supervisor of Hendrix, which falsely stated that only \$15,000 had been recovered from O.S.

125) During the incident, the co-conspirators also took O.S.'s house keys and determined O.S.'s home address by looking at his driver's license.

126) They later entered O.S.'s residence and stole approximately \$200,000, and other property.

127) **Jenkins** stole at least two (2) kilograms of cocaine from the residence.

128) **Jenkins** later gave the narcotics to a third-party to sell in order to obtain the profits of the sale of same for himself.

129) The co-conspirators did not author any police reports recognizing the \$200,000 they seized from the premises, nor the narcotics **Jenkins** seized from the premises.

130) **Jenkins**, Ward and Hendrix pled guilty to the criminal activity related to this incident. *See Exhibits, E, F and H.*

131) **Taylor** was proven to have committed the criminal activity associated with this incident at trial. *See Exhibit I.*

132) The March 22, 2016 incident involving citizen O.S. and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **March 9, 2016**

133) On or about March 9, 2016, **Jenkins**, Hendrix, **Taylor**, and Ward were involved in an incident involving a citizen bearing initials M.MC.

134) During the incident, the co-conspirators stole at least \$1,000 from citizen M.MC.

135) Ward authored a false police report and submitted same to BPD, which omitted any mention of the seizure of funds from citizen M.MC.

136) **Jenkins** signed off on the police report as the supervisor of Ward.

137) The March 9, 2016 incident involving citizen M.MC and the actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **March 2, 2016**

138) On or about March 2, 2016, Allers, J.C., Hersl, Gondo, and **Rayam** executed a search warrant at B.H. and T.A.'s home in Baltimore City and Allers stole more than \$7,000 of the cash that T.A. and B.H. had in their home.

139) To conceal his illegal conduct, on or about March 2, 2016, Allers approved an incident report which he knew contained false information.

140) Allers pled guilty to the criminal activity associated with this incident. *See* Exhibit C.

141) The March 2, 2016 incident and the actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **February 23, 2016**

142) On February 23, 2016, **Rayam**, Gondo, and Allers were involved in an incident in Baltimore County with a citizen bearing the initials B.C.

143) Gondo, **Rayam**, and Allers entered a residence where B.C. had a bedroom and stole \$7,000 from B.C.

144) Gondo authored false paper work and submitted same to BPD, that otherwise omitted that \$7,000 had been seized and taken from the B.C.'s bedroom.

145) To conceal his illegal conduct, Allers approved Gondo's report knowing that it contained false information.

146) Allers, **Rayam**, and Gondo pled guilty to the criminal activity associated with this incident. *See* Exhibits C, D, and G.

147) The February 23, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **February 17, 2016**

148) On or about February 17, 2016 **Jenkins**, Ward, and **Taylor** were involved in an incident with a citizen bearing the initials R.B.

149) After chasing citizen R.B. on the street the co-conspirators arrested R.B.

150) Ward and **Taylor** stole approximately \$500 from R.B.

151) Ward submitted a false police report to BPD, omitting that any funds had been recovered from R.B.

152) **Jenkins** signed off on the police report as a supervisor.

153) Ward pled guilty to the criminal conduct associated with the incident. *See* Exhibit E.

154) The February 17, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **February 10, 2016**

155) On February 10, 2016, **Rayam**, Gondo, and Allers were involved in an incident with a citizen bearing the initials P.E.

156) Gondo, **Rayam**, and Allers entered the residence where P.E. was located and stole money that citizen P.E. was counting at the time.

157) **Rayam** and Gondo pled guilty to the criminal activity associated with this incident. *See* Exhibits D and G.

158) To conceal his illegal conduct, on or about February 10, 2016, Allers approved an incident report authored by **Rayam** that he knew to be false.

159) The February 10, 2016 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **February 4, 2016**

160) On or about February 4, 2016 **Jenkins**, Ward, and Hendrix were involved in an incident involving a citizen bearing the initials M.S.

161) The co-conspirators initiated a traffic stop of citizen bearing the initials M.S., and during same seized approximately \$1500 to \$2,000 from citizen M.S.'s vehicle.

162) The co-conspirators did not report to BPD the seizure of the money.

163) **Jenkins** pled guilty to the criminal activity associated with this incident. *See* Exhibit H.

164) The February 4, 2016 incident and actions in respect to same depict not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **November 28, 2015**

165) On or about November 28, 2015, Hersl was involved in an incident involving a citizen bearing the initials A.S.

166) During the incident, Hersl stole \$282 from citizen A.S.

167) Hersl submitted a false police report to BPD in association with the incident, reflecting that only \$218 had been seized from citizen A.S. when in fact, a total of \$500 had been recovered from A.S.

168) Hersl was proven to have committed the criminal activity associated with this incident. *See Exhibit I.*

169) The November 28, 2015 incident involving citizen A.S. and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **November 27, 2015**

170) On or about November 27, 2015, Hersl was involved in an incident with a citizen bearing the initials H.T.

171) During the incident, Hersl stole \$312 from citizen H.T.

172) Hersl submitted a false police report to Plaintiff in association with the incident, reflecting that only \$218 had been seized from citizen H.T., when in fact, a total of \$530 had been recovered from H. T.

173) Hersl was proven to have committed the criminal activity associated with this incident. *See Exhibit I.*

174) The November 27, 2015 incident involving citizen H.T. and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **July 31, 2015**

175) On July 31, 2015 **Rayam**, Gondo, and Allers, were involved in an incident in Anne Arundel County, Maryland, with a citizen bearing the initials Z.N.

176) During the incident Gondo and **Rayam** seized U.S. currency from Z.N.'s home.

177) Gondo and **Rayam** found \$10,000 and stole \$8,900 if it; the remaining cash was recovered by the Anne Arundel County Police Department.

178) The co-conspirators did not author any police reports, or otherwise advise BPD that they seized the funds.

179) After Allers, Gondo, and **Rayam** left the residence they went to a bar/restaurant in Baltimore City and **Rayam** gave Allers his share of the stolen cash; **Rayam** and Gondo split the remainder.

180) Rayam, Gondo, and Allers pled guilty to the criminal activity associated with this incident. *See* Exhibits C, D, and G.

181) The July 31, 2015 incident and actions in respect to same depict actions not in the furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **April 3, 2015**

182) On or about April 3, 2015, Allers, Gondo, **Rayam** and J.C. entered the residence of D.M. and D.R. in Baltimore City to execute a search warrant.

183) At the time of the search, D.M. and his wife had approximately \$6,000 in their home.

184) During the execution of the search warrant, Gondo located money in a portfolio and gave the money to **Rayam**.

185) Allers then instructed Gondo and **Rayam** to “just do this here,” or words to that effect, which Gondo and **Rayam** understood to mean that they should take the money and split it with Allers.

186) Allers, Gondo, and **Rayam** stole approximately \$5700 from D.M. and D.R.

187) To conceal his illegal conduct, on or about April 3, 2015, Allers approved an incident report, which he knew to be false, authored by J.C. that was filed with the BPD.

188) Allers pled guilty to the criminal activity associated with this incident.

189) The April 3, 2015 incident and actions in respect to same depicts actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **Spring 2015 Robbery at Belvedere Towers**

190) In or about the spring of 2015, **Jenkins, Taylor**, and Ward, interrupted the sale of a large amount of marijuana at the Belvedere Towers apartment building in Baltimore.

191) **Jenkins** seized a bag containing approximately 30 pounds of marijuana from the would-be seller of the marijuana and a bag of containing approximately \$15,000 in U.S. currency.

192) **Jenkins** lied to the parties to the drug sale that he was a Drug Enforcement Administration agent, and that he was exercising his discretion to not charge or arrest the parties to the drug sale.

193) **Jenkins** took **Taylor** and Ward to a secluded area and gave each of them \$5,000; Jenkins never reported the seizure of the U.S. currency or the drugs to the BPD.

194) **Jenkins** later provided the drugs to a third party to sell, so he could obtain all of the profits from same.

195) **Jenkins** pled guilty to the criminal conduct associated with this incident. *See Exhibit H.*

196) The spring 2015 incident at the Belvedere Towers apartments and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **November 5, 2014**

197) On or about November 4, 2014, Hersl was involved in an incident with citizen, Jimmie Griffin.

198) It was proven at trial that Hersl committed a robbery of Griffin. *See Exhibit I.*

199) The November 5, 2014 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **October 8, 2014**

200) On or about October 8, 2014, Allers, Gondo, **Rayam**, and J.C. entered a store owned by D.K. in Baltimore City to execute a search warrant.

201) D.K. had approximately \$9,000 in cash in his apartment above the store.

202) Allers stole \$3,000 of the \$9,000; the remaining \$6,000 was recovered by the U.S. Marshals Service.

203) To conceal his illegal conduct, on or about October 8, 2014, Allers approved an incident report authored by J.C., which he knew to be false.

204) Allers pled guilty to the criminal activity associated with this incident. *See Exhibit C.*

205) The October 8, 2014 incident and actions in respect to same depicts not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

### **July 11, 2014**

- 206) On or about July 11, 2014, **Jenkins**, Hendrix, and an unknown police officer attempted a traffic stop of a citizen bearing the initials J.C.
- 207) J.C. fled from the co-conspirators.
- 208) The co-conspirators went into J.C.'s vehicle and seized between \$12,000 and \$14,000 from J.C.'s vehicle.
- 209) **Jenkins** did not report the seizure of funds to the BPD.
- 210) **Jenkins** pled guilty to the criminal conduct associated with this incident. *See Exhibit H.*
- 211) The July 11, 2014 incident involving citizen J.C. and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### **March 11, 2014**

- 212) On or about March 11, 2014, Allers, Gondo, and **Rayam** executed a search warrant at the residence of G. W. and Y.W. located in Baltimore County, Maryland, after having arrested G.W.
- 213) G. W. had approximately \$416,000 in the residence at the time of the search.
- 214) Y.W. had approximately \$1500 to \$2000 in the house at the time of the search.
- 215) Prior to calling Baltimore County law enforcement, Allers, Gondo, and **Rayam**, Searched the house and located a drawer full of money in an upstairs bedroom.
- 216) Allers told Gondo and **Rayam** that the homeowner "wouldn't miss a stack," or words to that effect and Allers took a stack of cash which contained approximately \$8,000 to \$10,000.
- 217) Allers also had his adult son with him, who was not a police officer, for the execution of the search.
- 218) Allers's son also took some of the cash.
- 219) Allers pled guilty to the criminal activity associated with this incident. *See Exhibit C.*
- 220) The March 11, 2014 incident and actions in respect to same depict actions not in furtherance of any recognized mission, training, policy, standard operating procedure, or guideline of the BPD.

#### IV. STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine dispute of material fact and, on the undisputed facts, a party is entitled to judgment as a matter of law. Md. Rule 2-501. Although ordinarily a jury question, scope of employment may be decided as a matter of law. *Houghton v. Forest*, 412 Md. 578, 592 (2010); *Sawyer v. Humphries*, 322 Md. 247, 262 (1991). “Where there is no conflict in the evidence relating to the question and but one inference can be drawn therefrom, the question is one of law for the court.” *Rusnack v. Giant Food Inc.*, 26 Md. App. 250, 265 (1975). There is no dispute of material fact when “the facts adduced to show that the defendant was acting within the scope of his employment are not legally sufficient to support such a reasonable finding by the trier of fact. *Clark v. Prince George’s Cnty.*, 211 Md. App. 548, 571 (2013). Here, the parties have entered into a stipulation of undisputed material facts for the purposes of their cross-motions for summary judgment. Based on the undisputed material facts, the City is entitled to judgment as a matter of law.

The City acknowledges, of course, that in reviewing its motion for summary judgment, “[t]he court is to consider the record in the light most favorable to the non-moving party and consider any reasonable inferences that may be drawn from the undisputed facts against the moving party.” *Mathews v. Cassidy Turley Md., Inc.*, 435 Md. 584, 598, 80 A.3d 269, 276 (2013). But the outcome of summary judgment in this case does not remotely hinge on **inferences**. Rather, this is a case of **abundant direct evidence**, of the Officers’ intentions and purposes, as revealed in their own sworn admissions and (as to Taylor) jury findings beyond a reasonable doubt as to those intentions and purposes. Although the Officers have not been specifically convicted of criminal activity in respect to their treatment of Mr. James, it is impossible for a reasonable factfinder to conclude, given those admissions and the timing and

character of the Officers' stipulated crimes perpetrated against Mr. James, that they were acting within the scope of their employment. And this is true notwithstanding that they were on duty, driving agency vehicles, armed with agency-provided service firearms, and present within their assigned territory at the moment they terrorized Mr. James. These factors are the sum total of Plaintiff's evidence; as a matter of law, they do not come close to sufficient to satisfy Plaintiff's burden to prove by a preponderance of the evidence that the Officers were acting within the scope of their employment.

Indeed, in recognition of the reality of the record presented here, Plaintiff will be filing her own cross-motion for summary judgment, insisting that, as a matter of law, the Officers were acting within the scope of their employment based on the factors set forth in the preceding paragraph. Thus, the binary choice presented to this Court is stark, and rightly so. The case is undeniably teed-up for resolution as a matter of law.

#### **IV. ARGUMENT**

There can be no clearer example of unauthorized activity occurring outside the scope employment than the egregious and pervasive criminality exhibited by the Officers in the underlying case, the same activity exemplified in the dozens of cases to which they and their co-conspirators have pled guilty in federal court. It is impossible to overstate the moral depravity of the GTTF officers, including the three at issue in this action. These individuals are, by their own admission, criminals of the worst sort. The extent and scope of their criminal enterprise is mind-boggling. As more fully explained below, these criminals violated RICO, the Hobbs Act, and engaged in a massive criminal conspiracy in violation of federal and Maryland law. Such outrageous conduct is, without question, outside the scope of their employment. Indeed, criminal conduct akin to that displayed here would clearly be outside of scope of *any* lawful employment.

As Plaintiff will concede, under *Francis*, she must carry the burden at trial to demonstrate that a reasonable juror could reasonably find by a preponderance of the evidence that the Officers' actions in detaining and causing the fraudulent and unconstitutional prosecution of Mr. James constituted conduct consistent with and within the scope of employment of the three Officers. Clearly, however, no reasonable fact finder could make such a finding on this record. As the City shows within, the nature and character of the offenses and the underlying facts and circumstances that are the foundation of the offenses in which the Officers were convicted, when viewed through the prism of binding and persuasive caselaw precedents on the issue of scope of employment, leaves no room for doubt: the City is entitled to judgment as a matter of law.

**A. SUMMARY OF THE RACKETEER INFLUENCED CORRUPT ORGANIZATIONS ACT (“RICO”) AND THE HOBBS ACT**

The Officers were convicted of offenses among the most serious and harmful to victims that appear in the federal criminal code. Congress enacted RICO, codified at 18 U.S.C. §§ 1961, *et. seq.*, “to seek the eradication of organized crime in the United States.” *United States v. Turkette*, 452 U.S. 576, 589 (1981) (citing Pub. L. No. 91-452, 84 Stat. 922, 923 (1970)); *accord Russello v. United States*, 464 U.S. 16, 20 (1983). The Supreme Court has noted the importance of Congress' direction that RICO be “liberally construed to effectuate its remedial purposes. *Id.* at 27 (citing § 904(a) of Pub.L. 91–452, 84 Stat. 947). Accordingly, since its inception, RICO has been invoked to prosecute a variety of offenses, including police misconduct. *See generally* Jake DuCharme *et. al.*, *Racketeer Influenced and Corrupt Organizations*, 56 AM. CRIM. L. REV. 1323, 1370-71 (2019) (“RICO has been used in a variety of cases beyond its initial congressional imagining, including those involving protests, the tobacco industry, health care fraud, and police misconduct.”).

Broadly speaking, in order to prosecute persons under the RICO statute, the prosecution must show that members of a criminal enterprise engaged in racketeering activity that had an effect on interstate commerce. 18 U.S.C. § 1962(a). Racketeering activity is defined by statute as follows:

any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled dangerous substance or listed chemical [] which is chargeable under State law and punishable by imprisonment for more than one year[.]

*Id.* at § 1961. In turn, § 1962 prohibits: (a) using income derived from a racketeering activity; (b) acquiring an interest in an enterprise through a pattern of racketeering activity; (c) participating in the affairs of an enterprise through a pattern of racketeering activity; and (d) conspiring to do any of the above.

In addition to prosecutions for actually committing a substantive RICO offense, the government is authorized to prosecute an individual under the RICO statute for *conspiring* to commit a substantive RICO offense. 18 U.S.C. § 1962(d). In a § 1962(d) RICO conspiracy prosecution, the prosecution must prove: (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense. *United States v. Gardner*, 417 F. Supp.2d 703, 711 (D. Md. 2006). Importantly, in *Salinas v. United States*, 522 U.S. 52 (1997), the Supreme Court held that a RICO conspiracy charge does not require proof of an overt act “to effect the object of the conspiracy.” *Id.* at 63. Rather, an agreement to pursue a criminal objective, even without an agreement as to every element of the offense, is enough. *Id.* at 65. As the Court explained, a defendant need only know of and agree to the overall object of the RICO conspiracy. *See id.* at 64 (“A conspirator must intend to further an endeavor which, if completed, would satisfy all the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or

facilitating the criminal endeavor.”). In particular, the Fourth Circuit has held that a defendant may be convicted of a RICO conspiracy even if the defendant did not commit or agree to commit any predicate racketeering act himself. *United States v. Mouzone*, 687 F.3d 207, 218 (4th Cir. 2012). And, “even where a defendant does not commit any racketeering act himself, a defendant who has joined a conspiracy continues to violate the law through every moment of the conspiracy’s existence, and he becomes responsible for the acts of his co-conspirators in pursuit of their common plot. Withdrawal terminates the defendant’s liability for post-withdrawal acts of his co-conspirators, but he remains guilty of conspiracy.” *Smith v. United States*, 568 U.S. 106, 111 (2013) (cleaned up).

The Hobbs Act addresses criminal violations similar to those covered under RICO. The Hobbs Act criminalizes acts affecting commerce by robbery or extortion, as follows:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by **robbery or extortion** or attempts **or conspires** so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

18 U.S.C. §1951(a) (emphasis added). The statute defines robbery as:

The unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

18 U.S.C. § 1951(b)(1). A Hobbs Act conspiracy under § 1951(a) requires a showing that the defendant agreed with at least one other person to commit acts that would satisfy the following three elements:

(1) that the defendant coerced the victim to part with property; (2) that the coercion occurred through the wrongful use of actual or threatened force, violence or fear or

under color of official right; and (3) that the coercion occurred in such a way as to affect adversely interstate commerce.

*United States v. Strayhorn*, 743 F.3d 917 (4th Cir. 2014) (quoting *United States v. Buffey*, 899 F.2d 1402, 1403 (4th Cir. 1990)). A Hobbs Act conspiracy may be committed “even without the use, attempted use, or threatened use of physical force against the person or property of another.” *United States v. Edmundson*, 153 F. Supp.3d 857, 859 (D. Md. 2015). In other words, the “statutory definition of Hobbs Act conspiracy does not require as an element the commission of an overt act. *Id.* To prove a Hobbs Act conspiracy “[i]t is sufficient to prove that the conspirators agreed that the underlying crime be committed by a member of the conspiracy.” *Ocasio v. United States*, 136 S. Ct. 1423, 1432 (2016).

\* \* \* \* \*

As the above summary of both RICO and the Hobbs Act shows, violations of both statutes occur when conspiratorial conduct of the most outrageous sort is committed. The agreement to commit underlying crimes lies at the heart of both RICO and the Hobbs Act. Of course, such conspiracy requires meticulous planning, deception, and an agreement to band together to violate the law, and to do so willfully and purposefully. The Officers were found guilty of, or pled guilty to, this very conduct. More specifically, the Officers pled guilty to, or were found guilty of, RICO conspiracy. Jenkins also pled guilty to racketeering and Hobbs Act Robbery, and Taylor was convicted of same. It strains credulity to say that such criminal behavior, which necessarily involved a sprawling and intricate conspiracy in order to avoid detection, could ever be found to be within the scope of employment. Although the Officers’ crimes against Mr. James were not made a specific element or feature of their plea deals or the verdict against them, by operation of the above legal principles, and frankly by virtue of plain

commonsense, it is undeniable that the crimes the Officers committed against Mr. James were part of that conspiracy.

**B. THE OFFICERS PLANTED A GUN ON MR. JAMES AND FALSIFIED HIS ARREST PAPERWORK DURING, AND IN FURTHERANCE OF, A CRIMINAL CONSPIRACY UNDER BOTH FEDERAL AND STATE LAW, IN PURSUIT OF THEIR PERSONAL ENTERPRISE TO ENRICH THEMSELVES**

As noted in the Stipulation, Mr. James and his girlfriend were traveling in their vehicle when two Baltimore police vehicles cut them off. Neither Mr. James nor his girlfriend were engaged in illegal activity or had committed any traffic infraction. Stipulation, ¶¶ 35-36. Co-conspirator Taylor pulled Mr. James out of his car and advised that he would release him if he provided the name of a person who possessed guns or drugs. *Id.* ¶ 36. Co-conspirator Rayam then advised Mr. James's girlfriend that he would be going to jail for possession of a gun. *Id.* The co-conspirators then huddled in a circle, and Jenkins emerged with a gun and stated, "This is your gun right here." *Id.* ¶ 37. Mr. James was not in possession of a gun, and none of the co-conspirator Officers had searched him. *Id.* ¶ 36. The co-conspirators then arrested Mr. James, and charged him with six felony counts related to illegal possession of a handgun. *Id.* ¶ 38.

Although the Officers' interaction with Mr. James was not part of the indictments and criminal prosecution of the Officers (nor was the incident included in the plea agreements or any other document relating to the criminal prosecution), the Officers' conduct with respect to Mr. James constituted acts performed during, and in furtherance of, the larger criminal conspiracy described herein. By operation of law then, the incident that formed the basis of Mr. James's damages claim is part and parcel of the Officers' criminal conspiracy.<sup>2</sup>

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<sup>2</sup> Although the City is not required to show or explain the immediate trigger or motive of the Officers to stop and detain Mr. James when and as they did, it is perfectly clear that the Officers' standard operating procedures, their *modus operandi*, was to stop random motorists about

## 1. The Officers Clearly Violated Maryland Law

Notably, there is no daylight between the features and character of the federal conspiracy offenses on which the Officers were convicted and the Maryland state counterparts of those offenses. In Maryland, a criminal conspiracy is defined as “the combination of two or more people to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means.” *White v. State*, 363 Md. 150, 167 (2001). The “unlawful agreement” requires only “a meeting of the minds reflecting a unity of purpose and design.” *Id.* No overt act in furtherance of the conspiracy is required. *Id.* In other words, “the crime [is] complete when the agreement formed.” *Carroll v. State*, 428 Md. 679, 698 (2012).

Precisely as under federal law, co-conspirators have joint and several liability for the acts of every member of the conspiracy. *See Grandison v. State*, 305 Md. 685, 703 (“the law imposes upon a conspirator full responsibility for the logical and natural consequences of acts committed by his fellow conspirators if such acts are done in pursuance of the common design or purpose of the conspiracy.”). Liability attaches even if the conspirator was not physically present when the act was committed. *Id.* Under Maryland law, “one who encourages, aids, abets, or assists the active perpetrator in the commission of the offense, is a guilty participant, and in the eye of the law is equally culpable with the one who does the act.” *Id.* Thus, all of the GTTF members who knowingly joined the ongoing conspiracy were “in for a pound” even if, subjectively, he was only “in for a penny.”

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whom there might be some hunch or guess regarding the presence of contraband (or, more urgently, United States currency). That clearly is what happened here. When reasonable suspicion and probable cause did not develop after Mr. James was arbitrarily detained, the Officers went about their conspiratorial business and fabricated an entire criminal case against him. It was the essence of what they did, day in and day out. *See supra*, pp. 10-24.

## 2. The *Pinkerton* Rule Ensures the Guilt of All GTTF Members

In *Pinkerton v. United States*, 328 U.S. 640 (1946), two brothers were indicted for violations of the Internal Revenue Code. *Id.* at 641. A single conspiracy was proved. *Id.* at 642. There was no evidence to show that one of the brothers participated directly in the commission of the substantive offenses, but there was evidence to show that the substantive offenses were committed in furtherance of the conspiracy. *Id.* at 645. In what became known as the “*Pinkerton* Rule,” the Court held that evidence of direct participation in the substantive offense was not necessary in order to prove the existence of a conspiracy. *Id.* at 646. The *Pinkerton* Rule provides that “a defendant is liable for substantive offenses committed by a co-conspirator when their commission is reasonably foreseeable and in furtherance of the conspiracy.” *United States v. Blackman*, 746 F.3d 137,140 (4th Cir. 2014). The law considers conspirators each other’s agents, and, “so long as the partnership in crime continues, the partners act for each other in carrying it forward.” *Id.* (citing *Pinkerton*, 328 U.S. at 646.) A single conspiracy may have a multiplicity of objects. *Pinkerton*, 328 U.S. at 643.

As shown by the Stipulation, the GTTF conspiracy continued right up until the GTTF members were arrested in early 2017; the crime of conspiracy is a “classic” continuing offense. *Savage v. State*, 212 Md. App. 1, 25 (2013). A conspiracy continues unless and until there is “affirmative evidence of abandonment, withdrawal, disavowal or defeat of the purposes of the conspiracy.” *Id.* (citing *United States v. Little*, 753 F.2d 1420, 1448 (9th Cir. 1984)).<sup>3</sup>

In the instant case, from at least 2014 until the date of their arrests, the Officers were co-conspirators in a plot to enrich themselves at the expense of the residents and visitors of

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<sup>3</sup> To be sure, withdrawal is not an affirmative defense to conspiracy. “Once the conspiracy has formed the conspirator may withdraw from it, but he will still be subject to a conspiracy charge.” *Savage*, 212 Md. App. at 25, n.19 (cleaned up).

Baltimore and the integrity of the BPD and the City. They pled guilty to conduct that “demonstrate[s] actions and omissions and various forms of conduct that grossly depart from any authorized or legitimate police conduct.” Stipulation, ¶ 22. Moreover, “the actions of the co-conspirators were performed during and in furtherance of their outrageous criminal conspiracy and in pursuit of their own pecuniary self-interests.” *Id.* ¶ 29.

The law is clear that the Officers are thus responsible for each other’s actions done during and in furtherance of the objectives and goals of the conspiracy. The parties have stipulated that “[a]s a result of the co-conspirators’ false charges, [Mr. James] was imprisoned and held without bail for more than seven months . . . .” Stipulation, ¶ 40. Tellingly, the Officers’ interaction with Mr. James occurred in August 2016, and during that same month, barely a week later, the following occurred:

- 59) On or about August 24, 2016, **Jenkins, Rayam**, Gondo, Hersl, and Hendrix were involved in an incident with a citizen bearing the initials A.F.
- 60) The co-conspirators initiated a traffic stop of citizen A.F. Hendrix stole \$1700 from citizen A.F. during the traffic stop while citizen A.F. was detained.
- 61) Hendrix later gave a portion of the \$1,700 to Ward.
- 62) None of the co-conspirators submitted any paperwork acknowledging the stop of citizen A.F., nor the taking of any of the funds from citizen A.F.

*See supra* p. 12 (quoting the Stipulation). On this record, it can only be concluded that, as a matter of law, perhaps if Mr. James had sufficient United States currency when he was unlawfully stopped, he too might have been “allowed” to “purchase” his freedom from a false arrest and an unconstitutional prosecution based on fabricated and planted evidence. In any event, the criminal scheme the Officers executed against him (*i.e.*, lying in arrest paperwork, planting evidence, intimidating witnesses, terrorizing citizens, and manufacturing probable cause) were in furtherance of the conspiracy, and is exactly the same type of criminal behavior for which the Officers were indicted and for which they were ultimately convicted.

**C. APPLICATION OF MARYLAND LAW DEMONSTRATES THAT THE OFFICERS' ACTIONS WERE OUTSIDE THE SCOPE OF EMPLOYMENT AS A MATTER OF LAW**

The question in this case is not whether the Officers' conduct was lawful. Mr. James has won his case. He has a judgment against the Officers. The question is simply whether the financial burden for that judgment should be shouldered by the taxpayers of Baltimore City or the criminals who participated in the depraved conspiracy that resulted in the judgment.

The City is not strictly liable for torts committed by its employees.<sup>4</sup> The LGTCA provides generally that a local government is liable for torts committed by an employee only when the employee is acting *within the scope of employment*. Md. Code, Courts & Jud. Proc. Art., § 5-303(b) (emphasis added). Similarly, the collective bargaining agreement between the City, BPD, and Baltimore City Lodge No. 3, Fraternal Order of Police, Inc. Unit I provides that “[t]he City will provide indemnification to any member of the unit who is made a defendant in litigation arising out of acts *within the scope of his/her employment* that results in a monetary judgment being rendered against the employee.” (Emphasis added). The scope of employment question is the “linchpin” of the City’s obligation to pay. *Espina v. Jackson*, 442 Md. 311, 347 (2015).

The Officers pled guilty to, or were found guilty of, RICO conspiracy and other crimes. In their plea agreements, the Officers admitted that “[i]n order to conceal their criminal conduct [they] authored false incident and arrest reports . . . documenting their encounters with detainees and arrestees” and “created false reports of property seized from arrestees . . .” *See, e.g.,* Jenkins’s Plea Agreement, 1:17-cr-00638-CCB, ECF No. 5 at p. 17 ¶ d.; Stipulation, ¶¶ 68, 86,

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<sup>4</sup> It is clear that the General Assembly did not intend boundless liability. There are important limitations on when a local government may indemnify for punitive damages. Md. Code, Courts & Jud. Proc. Art., §5-303(c).

109, 119, 135. Indeed, this is echoed in the Stipulation, which conclusively establishes that the Officers agreed as a part of their guilty pleas that “[t]he purposes of [the individual Defendant] and his co-defendants included violating the legitimate purposes of the BPD in order to enrich themselves through illegal conduct, including extortion, robbery and time and attendance fraud.” Stipulation of Facts, ¶ 21. The parties in this case have stipulated that “the offenses to which the co-conspirators pled guilty demonstrate actions and omissions and various forms of conduct that grossly depart from any authorized or legitimate police conduct” and that the “underlying actions comprising the criminal acts described in the indictments and plea agreements failed to serve any legitimate purpose of the City’s or BPD’s business . . .” Stipulation, ¶¶ 22, 26. The parties also stipulated that “[t]he actions of the co-conspirators were performed during and in furtherance of their outrageous criminal conspiracy and in pursuit of their own pecuniary self-interests” and that they “purposefully and regularly deviated from the legitimate law enforcement aims of the BPD’s mission in order to enrich themselves . . . .” Stipulation of Fact, ¶¶ 29-30.

Although Maryland law is somewhat unsettled as to whether and when a criminally convicted employee can ever be said to have acted within the scope of employment while committing criminal acts, a common sense reading of the existing Maryland cases provides the correct answer. A police officer – or any employee, for that matter – cannot possibly be acting within the scope of his employment when he commits malicious, heinous, intentional crimes against the very people he was hired to protect and serve. Maryland courts have decided several cases that are instructive on this point, all of which support the conclusion that the Officers acted outside the scope of their employment when they “deviated from the legitimate law enforcement aims of the BPD’s mission” by stopping James without probable cause, planting a gun on him,

and lying in arrest documents in order to “conceal their illegitimate and illegal conduct from City officials and from their supervisors.” Stipulation, ¶ 30, 31.

**1. *Sawyer v. Humphries*, 322 Md. 247 (1991)**

*Sawyer v. Humphries* is Maryland’s seminal case on the scope of employment of a law enforcement officer who commits grievous criminal acts while off-duty duty. There, an off-duty police officer threw rocks at the plaintiff’s vehicle. *Id.* at 251. Later that same day, the officer saw plaintiff’s vehicle at a stop sign. *Id.* The officer approached the vehicle, identified himself as a police officer, slapped plaintiff, and told him that he was under arrest. *Id.* Other officers arrived and arrested plaintiff. *Id.* at 251-52.

In deciding the case, the Court undertook a scope of employment analysis, identifying what has subsequently become known in Maryland as “*Sawyer* Factors.” *See, e.g., Prince George’s County v. Morales*, 230 Md. App. 699, 727 (2016). The Court reiterated the “general test set forth in numerous Maryland cases for determining if an employee’s tortious acts were within the scope of employment.” *Sawyer*, 322 Md. at 255. An employee’s tortious conduct does not come within the scope of employment unless: (1) the employee’s tortious acts were in furtherance of the employer’s business, and (2) the tortious actions were authorized by the employer. *Id.* at 255.

In applying the above test, the *Sawyer* Court cited with approval the factors from the Restatement (Second) of Agency § 229 (1933):

(1) To be within the scope of the employment, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized. (2) In determining whether or not the conduct, although not authorized, is nevertheless so similar to or incidental to the conduct authorized as to be within the scope of employment, the following matters of fact are to be considered:—(a) whether or not the act is one commonly done by such servants; (b) the time, place and purpose of the act; (c) the previous relations between the master and the servant; (d) the extent to which the business of the master is apportioned between different servants; (e) whether the

act is outside the enterprise of the master or, if within the enterprise, has not been entrusted to any servant; (f) whether or not the master has reason to expect that such an act will be done; (g) the similarity in quality of the act done to the act authorized; (h) whether or not the instrumentality by which the harm is done has been furnished by the master to the servant; (i) the extent of departure from the normal method of accomplishing an authorized result, and (j) **whether or not the act is seriously criminal**.

*Sawyer*, 322 Md. at 256 (emphasis added). The Court singled out as an “important factor”

whether the employee’s conduct was “expectable or foreseeable.” *Id.* at 256 (citing *Cox v. Prince*

*George’s County*, 296 Md. 162, 171 (1983)) (additional citations omitted). The Court announced

several other guiding principles: first,

[p]articularly in cases involving intentional torts committed by an employee, this Court has emphasized that where an employee’s actions are **personal, or where they represent a departure from the purpose of furthering the employer’s business, or where the employee is acting to protect his own interests, even if during normal duty hours and at an authorized locality**, the employee’s actions are outside the scope of his employment.

*Sawyer*, 256-57 (emphasis added); second,

[w]here the conduct of the servant **is unprovoked, highly unusual, and quite outrageous**, courts tend to hold that **this in itself is sufficient** to indicate the motive was a purely personal one.

*Id.* at 258 (cleaned up) (emphasis added); and third, even if an officer is on duty, that fact

does not lead to the conclusion that the officer is always acting in furtherance of the State’s business of law enforcement and that all conduct is incidental to police work.

*Id.* at 259-60. In support of this position, the Court cited *Snell v. Murray*, 117 N.J. Super. 268,

273-74 (1971), in which a “uniformed police officer on duty was not within the scope of his

employment where he extorted money from gamblers, shooting one of them in the process.” *Id.*

at 260. The *Sawyer* Court ultimately held that, although it was a jury question as to whether the

officer’s attempt to arrest the plaintiff was within the scope, throwing rocks at plaintiff’s car was

outside the scope of employment as a matter of law, in part because it was clear that the officer was acting for purely personal reasons. *Id.* at 257-60.

*Sawyer* stands for the proposition that a police officer's personally motivated actions do not fall within the scope of employment. The only conclusion that can be drawn from an analysis of the *Sawyer* Factors is that the Officers in the instant case were clearly acting outside the scope of employment when they stopped an innocent man without reasonable suspicion or probable cause of criminal activity, planted a gun, and lied in documents in order to arrest and incarcerate a man they knew to be innocent. The fact that the Officers were in an on-duty status at the time of their deviant behavior is of no moment. Their actions were clearly personal (they were almost certainly looking to grab some fast cash, as they indeed witnessed their colleagues do the same thing less than a week later), did not further the BPD's interests, and instead were part and parcel of their vast and sprawling criminal enterprise. The compelling weight of the evidence arising from the guilty pleas and the admissions of the Officers show that they were acting for their own purposes. The Officers were enmeshed in a years-long criminal conspiracy, which was purely personally motivated, and at odds with the legitimate purposes of the BPD, as admitted in the plea agreements. *See, e.g.,* Rayam's Plea Agreement at p. 10 ¶ 4; Stipulation, ¶¶ 26-30. No reasonable juror could find that the BPD (or any legitimate employer, for that matter) benefits from its members committing federal crimes in order to enrich themselves.<sup>5</sup>

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<sup>5</sup> Even apart from whether the Officers committed their crimes against Mr. James in furtherance of a conspiracy, their actions were nevertheless outside the scope of employment. Planting a gun on anyone, let alone an innocent citizen like Mr. James, is outrageously egregious conduct that serves no legitimate purpose. Although it could be argued that the BPD may benefit from getting guns off the street, there was no gun to get off the street in this case. Mr. James did not have a gun. Without question, the Officers' actions were "seriously criminal" and of the kind that the *Sawyer* Court concluded are outside the scope of employment. *See Sawyer*, 322 Md. at 256. The actions of the indicted GTTF members, including those of the three Officers involved in

**2. *Wolfe v. Anne Arundel County*, 374 Md. 20 (2003)**

In *Wolfe v. Anne Arundel County*, the Court of Appeals similarly found that criminal acts by a police officer were outside the scope of his employment. In *Wolfe*, an on-duty police officer raped a driver whom he had pulled over for a traffic stop. *Id.* at 34. In an ensuing civil action, a federal court entered judgment against the officer for this criminal act. *Id.* at 23. Thereafter, Wolfe filed a complaint asserting that the county was required to pay the judgment. *Id.* at 24. The trial court granted summary judgment in favor of the county, finding that the officer's acts were not within the scope of his employment. *Id.* at 25-26.

The Court of Appeals summarized Wolfe's argument as follows:

[T]he traffic stop was an act by [the officer] within the scope of his employment, and the tort suit constituted 'litigation arising out of' that traffic stop . . . . In arguing that the litigation, based upon rape and battery, arose out of the traffic stop, *Wolfe* utilizes a 'but for' test. She states that, 'but for' Ziegler's position as a police officer making the traffic stop, the rape and battery would not have occurred.

*Id.* at 31-32. The Court ultimately rejected this argument, stating "[t]he litigation arose out of the 'act' of raping Ms. Wolfe and not out of the 'act' of the traffic stop. *Id.* at 36. The Court also noted that the rape "was neither authorized nor permitted . . . . [I]t was criminal." *Id.* Again, as in *Sawyer*, the case turned on the criminal conduct of the officer.

The instant case is indistinguishable from *Wolfe*. Here, as in *Wolfe*, the Officers' actions were plainly criminal. Their crimes against Mr. James were committed during and in furtherance of the conspiracy for which they were later convicted or pled guilty. The judgment against the Officers arises not out of any legitimate action or use of police powers, but out of the

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this case, are the epitome of "unprovoked, highly unusual and quite outrageous" behavior for a police officer that falls outside the scope of employment as matter of law.

opportunistic planting of the gun, and falsifying paperwork, which were part and parcel of the broader criminal conspiracy.

**3. *Clark v. Prince George's County*, 211 Md. App. 548 (2013); *Brown v. Mayor of Balt.*, 167 Md. App. 306 (2006)**

In *Clark v. Prince George's County*, an off-duty officer used his service weapon to shoot two furniture deliverymen after an altercation inside the officer's home. *Id.* at 553. The officer called 911 and reported the shooting as a "departmental shooting," presented his police badge, and filed a use of force report in accordance with police procedures. *Id.* at 576-77. He also testified that when he shot the deliverymen he "was acting in accordance with his police training in responding to a threat, and in particular in accordance with General Orders that provide the police officers may have to use force in defense of themselves or others." *Id.* at 577. In short, the officer claimed that his actions were driven by a business purpose, and therefore within the scope of employment. This stands in stark contrast to the instant matter, where the Officers have freely admitted that their actions were personal and not done to further the mission or interests of the BPD. The *Clark* Court held that because the officer was acting to protect himself, his home, and his family, his actions were personal and not part of his duties. *Id.* Thus, the conduct was outside the scope of employment and the County was free of any liability. *Id.* The Court further noted that shooting delivery persons is not an act "commonly done" by police officers. *Id.* at 578.

In *Brown v. Mayor of Baltimore*, an off-duty police officer shot the victim 17 times because he believed that the victim was having an affair with his wife. *Id.* at 323. The officer pled guilty to first degree murder. *Id.* The Court found that the officer's actions were highly personal and outrageous and as such, not within the scope of employment. *Id.*

As in *Clark* and *Brown*, the Officers in the case *sub judice* acted for their own personal gain even though they were on duty. They pled guilty to, or were convicted of, conspiracy

charges, whose overt acts were cut from the same cloth as those taken against Mr. James, and at a time (August 2016) when the conspiracy was in full execution. The incident with Mr. James was during and in furtherance of that very conspiracy in connection with which two of the Officers specifically admitted that their “purpose[] . . . included violating the legitimate purposes of the BPD in order to enrich themselves through illegal conduct. . .” Rayam’s Plea, p. 10 ¶ 5. As in *Brown*, the Officers have been found guilty of intentional, willful crimes. There is no reason that this case should be treated any differently from *Brown*. The fact that the Officers have pled guilty to or were convicted of intentional crimes forecloses any possibility that a reasonable fact finder could reasonably conclude that they were acting within the scope of their employment when they committed those crimes.

As in *Clark*, criminal conspiracy, planting guns, lying in official documents and sending innocent people to jail are not things “commonly done” by police officers, any more than the officer in *Clark* shooting the delivery persons with his service weapons was a thing “commonly done” by police officers. In fact, it is actually more likely that an off-duty officer would shoot a person in response to a perceived threat (*i.e.*, the outside the scope conduct in *Clark*), than it is that officers would enter into a criminal conspiracy, plant guns, manufacture probable cause, lie in arrest documents, and conspire to send an innocent man to jail (*i.e.*, the conduct in the underlying case). Furthermore, the Court in *Clark* was not impressed that the officer claimed to be following departmental policy and training when he shot the deliverymen. Even so, the instant case is stronger than *Clark* because “[t]he underlying actions comprising that criminal activity are not ones recognized, supported, or otherwise authorized by any of BPD’s training provided to law enforcement officers.” Stipulation, ¶ 27. Furthermore, the Officers in our case actually admitted that the purpose of the conspiracy was to “violat[e] the legitimate purposes of the BPD

in order to enrich themselves through illegal conduct. . .” Rayam’s Plea, p. 10 ¶ 5, and the parties have stipulated that “[t]he offenses to which the co-conspirators pled guilty,” or, “of which they were found guilty” “demonstrate actions . . . that grossly depart from any authorized or legitimate police conduct” and “failed to serve any legitimate purpose of the City’s or BPD’s business.” Stipulation, ¶¶ 22, 25, 26

**4. *Tall v. Bd. of Sch. Comm’rs of Balt. City*, 120 Md. App. 236 (1998); *LePore v. Gulf Oil Corp.*, 237 Md. 591 (1965)<sup>6</sup>**

In *Tall v. Board of School Commissioners of Baltimore City*, parents sued a school board for injuries a special education teacher inflicted upon their mentally handicapped son when she beat his arms and legs with a ruler because he urinated in his pants. 120 Md. App. at 254. The parents contended that the teacher had acted within the scope of her employment because some physical interaction between the child and the teacher, including “disciplining [the child] if [he] misbehaved or failed to listen,” “was foreseeable” due to the child’s disability. *Id.* at 248. The *Tall* Court rejected this argument. Reviewing factually analogous cases from several other jurisdictions, the court found two considerations persuasive in concluding that the teacher had acted outside the scope of employment when beating the child. *Id.* at 258-60.

First, the school board had a written policy prohibiting corporal punishment in any form. Second, although legitimate physical interactions between a teacher and mentally handicapped student may “be appropriate in certain situations, [those legitimate interactions] in no way constitute[ ] implied authority for a teacher to beat a mentally disabled child” in order to discipline him. *Id.* at 259. Indeed, the *Tall* Court could identify no manner in which the act of

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<sup>6</sup> Although *Tall* and *Gulf Oil* do not involve police officers, the Court of Appeals has stated that “the same basic principles of Maryland agency law, for determining whether actions of employees generally are within the scope of particular employment relationships, are equally applicable to police officers.” *Lovelace v. Anderson*, 366 Md. 690, 721 (2001).

beating a mentally disabled child could further the school board's objective of educating children, and it thereby refused to hold the school board vicariously liable for the teacher's actions. *Id.* at 260.

In *LePore v. Gulf Oil Corp.*, a plaintiff brought suit against an employee of Gulf Oil for assault and battery and sought to hold Gulf Oil liable under principles of vicarious liability. The employee was a retail sales representative whose duties included promoting service station outlets, securing operators and helping to train and counsel operators in merchandising Gulf's products. 237 Md. App. at 593. He also called on operators working under a bailment plan to collect monies due to Gulf. *Id.* In furtherance of these duties, when the employee called on plaintiff to recover monies owed to Gulf, a heated argument ensued between the two. *Id.* at 594. During the argument, the employee used foul language and struck plaintiff. *Id.* at 595. Gulf Oil sought and received a directed verdict on the basis that the assault by the employee was outside the scope of his employment with Gulf and was not reasonably foreseeable by Gulf. *Id.* at 593. On appeal, the Court of Appeals agreed with the employer, holding that Gulf was not liable for the assault on a third person by an employee "who lost his temper in a quarrel arising out of the attempted collection, and struck the third person." *Id.* at 595. The Court reasoned:

In the present case, the only authority ... was to attempt to make a collection and to call his employer if he failed to do so. We hold that this, without more, is insufficient to make the subsequent assault an expectable act done in furtherance of his employment and he was, therefore, acting without the scope of his employment.

*Id.* at 600.

The present case has interesting parallels to both *Tall* and *Gulf Oil*. The Officers obviously had the authority to make arrests, just as the employee in *Gulf Oil* had the authority to collect monies. However, just as the employee in *Gulf Oil* did not have the authority to collect

monies by way of violence, the Officers here did not have the authority to effect arrests by any means, and utterly without the constitutionally required basis (probable cause) to do so. They certainly did not have the authority manufacture probable cause out of whole cloth. Nor did they have the authority to plant guns on citizens, to invent charges, to lie in arrest documents, and to intentionally send innocent people to jail. Indeed, if this type of behavior is “expectable” of police officers and is considered “in furtherance” of a police department and its objectives, then society is in trouble.

As in *Tall*, where the Court held that physically disciplining a child could not further the objective of educating children, there is no manner in which the act of planting a gun and falsifying records in order to send an innocent man to jail (during and in furtherance of a conspiracy for which the Officers have pled guilty to or been convicted of, no less) could further the BPD’s objective, which is “to protect and preserve life, protect property, understand and serve the needs of the Baltimore City’s neighborhoods, and to improve the quality of life in Baltimore City.” Rayam’s Plea Agreement p. 10 ¶ 4; Stipulation, ¶ 2.

Planting the gun, falsifying charges, and intentionally sending an innocent man to jail is, in and of itself, outside the scope of employment. The fact that the Officers committed these crimes against Mr. James during and in furtherance of a criminal conspiracy solidifies that conclusion. It is undisputed that the Officers were acting for their own personal motives, and against any legitimate interests of the BPD or City. It is the plaintiff’s burden to prove that the City is liable “either through an enforcement action or some other permissible mechanism.” *Francis*, 239 Md. App at 548. Plaintiff cannot meet that burden. Given the damning facts screaming from the Stipulation, no reasonable juror could find in favor of Plaintiff, and the scope

of employment issue must be decided as a matter of law: it is clear that the Officers' actions in this case were not within the scope of employment.

**D. CONSIDERATIONS OF PUBLIC POLICY MILITATE STRONGLY AGAINST ENFORCEMENT OF THE JUDGMENT IN THIS CASE**

The Officers encountered Mr. James and detained him without probable cause, and then, during and in furtherance of their conspiracy, they planted a gun on him and lied in the accompanying paperwork as part of their scheme to further enrich themselves. There are compelling policy reasons to find that the Officers were acting outside the scope of their employment. First, it is hard to imagine a more outrageous abuse of authority. The Officers' participation in the conspiracy has caused untold damage to the BPD and the citizens of Baltimore. Consequently, the citizens of Baltimore should not have to pay for the Officers' crimes (other than on a voluntary, case-by-case evaluation of the circumstances of each instance of victimization).

Second, myriad undesirable consequences would result if a court were to hold that this type of conduct is within the scope of employment. Local governments would have to flirt with bankruptcy to avoid the costs of malignancy that sometimes overtake municipal law enforcement agencies despite the best efforts of leaders to hold up such paramilitary agencies as having integrity and being committed to constitutional policing. If this type of behavior is foreseeable and furthers the BPD's interests, then the BPD is nothing more than an organized crime institution. In order for a court to rule that the Officers' actions were within the scope of employment, the court would necessarily have to conclude that the Officers' actions were not outrageous and personal.

In sum, the Court would have to find that a jury could reasonably conclude that the actions of these convicted criminals were foreseeable and expectable, and that it is in furtherance

of police duties to lie, rob citizens, plant drugs and guns on people, and knowingly fabricate evidence to send innocent people to jail in order to line their pockets. If this is the outcome, then law enforcement agencies across the country are in grave danger: why even have a police force, if operating a criminal enterprises on company time is within the scope of police employment? Furthermore, with respect to the LGTCA, a ruling that the Officers acted within the scope of employment in this case would eclipse the legitimate goal and social purposes of providing indemnification to government employees.<sup>7</sup> It would also send a message to officers (and to citizens) that officers will not be held accountable for their actions: even if they commit intentional, malicious crimes, they will not be financially liable. The City does not seek to condone this behavior by indemnifying these Officers, and neither should this Court.

## **V. CONCLUSION**

For the foregoing reasons, the City requests this Court grant its Motion for Summary Judgment and enter judgment in its favor.

Respectfully submitted,

/s/Andre M. Davis

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<sup>7</sup> There would be no indemnity under the Maryland Tort Claims Act, Md. Code, State Gov't Art., § 12-104, because the Officers acted with malice and did not act within the scope of their public duties.

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**REQUEST FOR A HEARING**

Movant, the Mayor and City Council of Baltimore, respectfully requests a prompt hearing on its Motion for Summary Judgment.

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on this 2nd day of July, 2019, copies of the foregoing Motion for Summary Judgment, Memorandum in Support, Proposed Order, and Request for Hearing, were mailed, postage paid, to:

Howard A. Miliman, Esq.  
Mandy L. Miliman, Esq.  
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/s/Kara K. Lynch  
\_\_\_\_\_  
Kara K. Lynch  
CHIEF SOLICITOR